

In re Application of:

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Examiner: Jinsong Hu

Serial No. 09/615,663

Art Unit: 2154

Filed: July 14, 2000

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APPEAL BRIEF UNDER 37 C.F.R. §§ 41.31 AND 41.37

Sir or Madam:

This is an appeal to the Board of Patent Appeals and Interferences from the decision of the Examiner of Art Unit 2154, who in a Final Office Action mailed August 12, 2005 rejected claims 1, 6, 10-12, 16, 25-27, 32, 36-38, 42, and 77-92 in the above-identified application. Appellants respectfully request consideration of this Appeal Brief by the Board of Patent Appeals and Interferences and for allowance of these claims.

It is not believed that extensions of time are required beyond those that may otherwise be provided for in documents accompanying this paper. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. §1.136(a). Any fees required therefore are hereby authorized to be charged to Deposit Account No. 02-2666. Please credit any overpayment to the same deposit account.

02/16/2006 CCHAU1 00000052 09615663

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I. Real Party in Interest

The application is assigned to KnowNow, Inc. of 997 E. Arques Avenue, Sunnyvale, California, 94085.

II. Related Appeals and Interferences

To the best of Appellants' knowledge, there are no prior or pending appeals, interferences, or judicial proceedings that may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. Status of the Claims

Claims 1, 6, 10-12, 16, 25-27, 32, 36-38, 42, and 77-92 are pending in the application. Claims 1, 6, 10-12, 16, 25-27, 32, 36-38, 42, and 77-92 are finally rejected.

Claims 1, 6, 10-12, 16, 25-27, 32, 36-38, 42, and 77-92 are the subject of this appeal. A copy of claims 1, 6, 10-12, 16, 25-27, 32, 36-38, 42, and 77-92 is set forth in the Claims Appendix.

IV. Status of Amendments

An Amendment is being filed today, February 14, 2006. The Amendment has not yet been entered, thus the claims set forth in the Claims Appendix do not reflect changes that are proposed in the Amendment.

V. Summary of Claimed Subject Matter

The claims under appeal generally relate to information delivery in a network. Claims 1, 27, 86, and 92 are the independent claims under appeal.

Claim 1:

Claim 1 is directed to monitoring and detecting publication of information in a network, organizing the detected information into at least one event, routing the at least one event to a set of topics, facilitating a user to persistently subscribe to at least one topic selected from among the set of topics, and delivering the event to the user via the Internet immediately upon detection based on a subscription to a topic. Delivering the event to the user is not in reply to a request

from the user and whether the event is delivered to the user is not determined by a set of conditions imposed by the sender that the user must satisfy.

An embodiment of a method according to claim 1 is depicted in Figure 2, which is described in Appellants' specification on page 10, line 14, to page 11, line 8. The specification provides that "an embodiment of the present invention organizes information into topics... [and] facilitates a user 102 to persistently subscribe to one or more topics. To fulfill the user 102's subscription the information control network 108 continuously and independently monitors/searches the Internet 110 for information related to the topic(s)... an embodiment routes information to a user 102 based on the user 102's level of interest in the topic... [and] delivers information matching the subscription to a user 102, on a user device or user application, or on a microserver-equipped client computer...."

Claim 27:

Claim 27 is directed to monitoring and detecting publication of information in a network, organizing the detected information into at least one event, routing the at least one event to a set of topics, facilitating a client to persistently subscribe to at least one topic selected from among the set of topics, and delivering the event to the client via the Internet immediately upon detection based on a subscription to a topic. Delivering the event to the client is initiated by a server. The client does not include a programmed request and/or a poll for the event and whether the event is delivered to the client is not determined by a set of conditions that the client must satisfy and imposed by the sender.

An embodiment of a method according to claim 27 is depicted in Figure 2, which is described in Appellants' specification on page 10, line 14, to page 11, line 8. The specification provides that "an embodiment of the present invention organizes information into topics... [and] facilitates a user 102 to persistently subscribe to one or more topics. To fulfill the user 102's subscription the information control network 108 continuously and independently monitors/searches the Internet 110 for information related to the topic(s)... an embodiment routes information to a user 102 based on the user 102's level of interest in the topic... [and] delivers information matching the subscription to a user 102, on a user device or user application, or on a microserver-equipped client computer...."

Claim 86:

Claim 86 is directed to monitoring and detecting publication of information in a network, organizing the detected information into at least one event, routing the at least one event to a set of topics, facilitating a user to persistently subscribe to at least one topic selected from among the set of topics, and delivering the event to the user using a web server protocol. Delivering the event to the user is not in response to a programmed request and/or a poll for the event and whether the event is delivered to the user is not determined by a set of conditions imposed by the sender that the user must satisfy.

An embodiment of a method according to claim to claim 86 is depicted in Figure 2, which is described in Appellants' specification on page 10, line 14, to page 11, line 8. The specification provides that "an embodiment of the present invention organizes information into topics... [and] facilitates a user 102 to persistently subscribe to one or more topics. To fulfill the user 102's subscription the information control network 108 continuously and independently monitors/searches the Internet 110 for information related to the topic(s)... an embodiment routes information to a user 102 based on the user 102's level of interest in the topic... [and] delivers information matching the subscription to a user 102, on a user device or user application, or on a microserver-equipped client computer...."

Claim 92:

Claim 92 is directed to receiving a connection at a web page from a user, the web page having content including a microserver, automatically delivering the microserver to the user via the Internet, allowing other web page content to automatically subscribe to events on behalf of the user, and delivering events and/or other web page content to the user. Delivering the event to the user is not determined by a set of conditions imposed by the sender that the user must satisfy.

An embodiment of a method according to claim to claim 92 is depicted in Figure 2, which is described in Appellants' specification on page 10, line 14, to page 11, line 8. The specification provides that "an embodiment of the present invention organizes information into topics... [and] facilitates a user 102 to persistently subscribe to one or more topics. To fulfill the

user 102's subscription the information control network 108 continuously and independently monitors/searches the Internet 110 for information related to the topic(s)... an embodiment routes information to a user 102 based on the user 102's level of interest in the topic... [and] delivers information matching the subscription to a user 102, on a user device or user application, or on a microserver-equipped client computer....”

VI. Grounds of Rejection to be Reviewed on Appeal

Claims 1, 6, and 11-12 stand finally rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,047,310 to Kamakura et al. Claims 10, 16, 25-27, 32, 36-38, 42, and 77-92 stand finally rejected under 35 U.S.C. §103(a) as obvious over Kamakura as applied to claims 1, 6, and 11-12 in view of “Official Notice.” In the following discussion, reference is made to the Final Office Action mailed August 12, 2005.

VII. Argument

Rejection of Claims 1, 6, and 11-12 Under 35 U.S.C. §102(e)

In the Final Office Action, the Examiner rejected claims 1, 6, and 11-12 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,047,310 to Kamakura et al. (hereinafter “Kamakura”).

The law requires that an Examiner support a rejection under 35 U.S.C. §102(e) by setting forth a *prima facie* case of anticipation. A claim is anticipated only if each and every element of the claim is found in a reference. (MPEP §2131 citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628 (Fed. Cir. 1987)). The identical invention must be shown in as complete detail as is contained in the claim. *Id.* citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989)). Appellants respectfully submit that the rejection is improper and request that the rejection be overturned.

Kamakura appears to be directed to a system and method for delivering direct mail advertising over the Internet. The problem addressed in Kamakura is that “a sender of” such “direct mail” “almost unconditionally sends advertisement information to all subscribers of the computer network.” Many users either cannot access the direct mail advertisement or do not want the advertised items. (Col. 1, lines 28-30). The solution proposed in Kamakura is targeted

direct mail advertising. In the system and method of Kamakura, the receiver designates specific commodities or services for delivery and the sender of the direct mail advertisement determines a set of conditions that a receiver of the direct mail advertisement should meet, such as sex, age, and occupation. The system in Kamakura matches the receiver designations to the sender's requirements for the receiver. If the receiver meets the requirements established by the sender of the direct mail for the particular service or commodity, then the system in Kamakura will deliver the direct mail advertising to the receiver. If the receiver does not meet the requirements established by the sender of the direct mail for the particular service or commodity, then the system in Kamakura will not deliver the direct mail advertising to the receiver. Thus, the sender controls which receivers receive the direct mail advertising.

Kamakura Does Not Teach the Identical Invention of Claim 1

Appellants respectfully submit that Kamakura does not teach the identical invention recited in claim 1. For example, Appellants respectfully submit that Kamakura does not teach “wherein delivering the event to the user is ***not based on conditions set by a publisher*** of the information” (emphasis added) as recited in claim 1. In Kamakura, the sender of the direct mail advertisement (publisher) determines the conditions (e.g., sex, age, and occupation) that must be satisfied before a receiver (user) is permitted to receive certain direct mail advertising. This is in direct contravention of claim 1, for example, in which the publisher of the information has no control over whether the subscriber can receive the published information. Thus, Kamakura does not teach “wherein delivering the event to the user is not based on conditions set by a publisher of the information” as recited by claim 1.

Appellants respectfully submit further that Kamakura fails to teach “delivering the event to the user via the Internet ***immediately upon detection*** based on a subscription to a topic, wherein delivering the event to the user is not in reply to a request from the user” (emphasis added) as recited in claim 1. Appellants respectfully submit that Kamakura is a store and forward system in that a sender sends the direct mail document 26 to the host computer 11, which stores the direct mail document 26 until the direct mail document 26 can be forwarded to the receiver in accordance with the algorithm illustrated in Figure 20. Appellants respectfully submit that performing the algorithm illustrated in Figure 20 adds additional latency to the direct mail document 26 delivery process and thus Kamakura cannot deliver the event to the user via the

Internet *immediately* upon detection based on a subscription to a topic, as claim 1 recites. Thus, Kamakura does not teach “delivering the event to the user via the Internet immediately upon detection based on a subscription to a topic, wherein delivering the event to the user is not in reply to a request from the user” as recited by claim 1.

Appellants respectfully submit that Appellants only need to demonstrate that one element of the claimed invention is missing to establish that the Examiner has not met the initial burden of making a *prima facie* case of anticipation with respect to the claimed invention. Appellants have shown that at least two elements are not taught either expressly or inherently in Kamakura. Appellants respectfully submit therefore that because the Examiner has failed to show that Kamakura teaches the identical invention as recited in claim 1, the Examiner has failed to meet the burden of establishing a *prima facie* case of anticipation of the claimed invention over the Kamakura. Accordingly, Appellants respectfully request that the rejection be overturned.

Rejection of Claims 10, 16, 25-27, 32, 36-38, 42, and 77-92 Under 35 U.S.C. §103(a)

In the Office Action, the Examiner rejected claims 10, 16, 25-27, 32, 36-38, 42, and 77-92 under 35 U.S.C. § 103(a) as obvious over Kamakura as applied to claims 1, 6, and 11-12 in view of “Official Notice.”

The law requires that an Examiner support a rejection under 35 U.S.C. §103(a) by setting forth a *prima facie* case of obviousness. *In re Duel*, 51 F.3d 1552, 1557, 34U.S.P.Q.2d 1210, 1214 (Fed. Cir. 1995). To establish a *prima facie* case of obviousness, an Examiner must show three things: (1) that there is some suggestion or motivation to modify a reference or combine reference teachings to arrive at the claimed invention, (2) that there must be a reasonable expectation of success, and (3) that the references teach or suggest each and every element of the claimed invention. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Appellants respectfully submit that the rejection is improper and request that the rejection be overturned.

Kamakura Does Not Teach the Each and Every Element of Claim 27

Appellants respectfully submit that Kamakura does not teach each and every element of claim 27. For example, Appellants respectfully submit that Kamakura does not teach “wherein delivering the event to the user is *not based on conditions set by a publisher* of the information”

(emphasis added) as recited in claim 27. In Kamakura, the sender of the direct mail advertisement (publisher) determines the conditions (e.g., sex, age, and occupation) that must be satisfied before a receiver (user) is permitted to receive certain direct mail advertising. This is in direct contravention of claim 27, for example, in which the publisher of the information has no control over whether the subscriber can receive the published information. Thus, Kamakura does not teach “wherein delivering the event to the user is not based on conditions set by a publisher of the information” as recited by claim 27.

Appellants respectfully submit further that Kamakura also fails to teach “delivering the event to the user via the Internet *immediately upon detection* based on a subscription to a topic, wherein delivering the event to the user is not in reply to a request from the user” (emphasis added) as recited in claim 27. Appellants respectfully submit that Kamakura is a store and forward system in that a sender sends the direct mail document 26 to the host computer 11, which stores the direct mail document 26 until the direct mail document 26 can be forwarded to the receiver in accordance with the algorithm illustrated in Figure 20. Appellants respectfully submit that performing the algorithm illustrated in Figure 20 adds additional latency to the direct mail document 26 delivery process and thus Kamakura cannot deliver the event to the user via the Internet *immediately* upon detection based on a subscription to a topic, as claim 27 recites. Thus, Kamakura does not teach “delivering the event to the user via the Internet immediately upon detection based on a subscription to a topic, wherein delivering the event to the user is not in reply to a request from the user” as recited by claim 27.

Appellants respectfully submit that the “Official Notice” that the Examiner takes fails to make up for the deficiencies in Kamakura. The “Official Notice” that the Examiner takes does not address the missing elements recited in claim 27, namely “wherein delivering the event to the user is *not based on conditions set by a publisher* of the information” and/or “delivering the event to the user via the Internet *immediately upon detection* based on a subscription to a topic, wherein delivering the event to the user is not in reply to a request from the user.” Thus Kamakura in view of “Official Notice” fails to teach each and every element of the claimed invention.

Kamakura Does Not Teach the Each and Every Element of Claim 86

Appellants respectfully submit that Kamakura does not teach each and every element of claim 86. For example, Appellants respectfully submit that Kamakura does not teach “wherein delivering the event to the user is ***not based on conditions set by a publisher*** of the information” (emphasis added) as recited in claim 86. In Kamakura, the sender of the direct mail advertisement (publisher) determines the conditions (e.g., sex, age, and occupation) that must be satisfied before a receiver (user) is permitted to receive certain direct mail advertising. This is in direct contravention to what claim 86 explicitly recites. Thus, Kamakura does not teach “wherein delivering the event to the user is not based on conditions set by a publisher of the information” as recited by claim 86.

Appellants respectfully submit that the “Official Notice” that the Examiner takes fails to make up for the deficiencies in Kamakura. For example, the “Official Notice” that the Examiner takes addresses using the Internet with Kamakura’s system. The “Official Notice” that the Examiner takes does not address the missing elements recited in claim 86, namely “wherein delivering the event to the user is ***not based on conditions set by a publisher*** of the information” Thus Kamakura in view of “Official Notice” fails to teach each and every element of the claimed invention.

Omnibus Rejections Are Not Permissible

In the Office Action, the Examiner improperly groups claims 86-92 in a common rejection. Appellants respectfully submit that MPEP §707.07(d) provides ***a plurality of claims should never be grouped together in a common rejection*** unless the rejection is equally applicable to all claims in that group. Appellants respectfully submit that the Examiner has not properly addressed independent claim 92. For example, the Examiner has not pointed out where Kamakura teaches “receiving a connection at a web page from a user, the web page having content including a microserver; ***automatically delivering the microserver to the user*** via the Internet; ***allowing other web page content to automatically subscribe*** to events on behalf of the user” (emphasis added) as recited in claim 92. Appellants respectfully request therefore that the claims 86-92 be ungrouped and examined separately.

In the Examiner's traversal of Appellants' remarks in the previous Office Action, the Examiner cited U.S. Patent No. 6,122,246 to Horbal et al. (hereinafter "Horbal") for the proposition that a micro-server is common knowledge. However, it is not clear why the Examiner did not apply Horbal directly to claim 92 and provide an analysis of how Horbal applies to claim 92. Because the Examiner merely cited Horbal in the Examiner's traversal of Appellants' remarks without further analysis, Appellants respectfully submit that the Examiner has offered no suggestion or motivation to modify Kamakura with Horbal or combine the teachings of Kamakura and Horbal to arrive at claim 92. Nor has the Examiner pointed to how the combination teaches each and every element of claim 92. Nor has the Examiner pointed to how the combination would be reasonably successful in arriving at claim 92. These are the requirements for making out a *prima facie* case of obviousness.

Kamakura Does Not Teach the Each and Every Element of Claim 92

Appellants respectfully submit that Kamakura does not teach each and every element of claim 92. For example, Appellants respectfully submit that Kamakura does not teach "wherein delivering the event to the user is ***not based on conditions set by a publisher*** of the information" (emphasis added) as recited in claim 92. In Kamakura, the sender of the direct mail advertisement (publisher) determines the conditions (e.g., sex, age, and occupation) that must be satisfied before a receiver (user) is permitted to receive certain direct mail advertising. This is in direct contravention to what claim 92 explicitly recites. Thus, Kamakura does not teach "wherein delivering the event to the user is not based on conditions set by a publisher of the information" as recited by claim 92.

Appellants respectfully submit that Kamakura also fails to teach "automatically ***delivering the microserver*** to the user via the Internet" or "***allowing*** other ***web page content to automatically subscribe*** to events on behalf of the user" (emphasis added) as recited in claim 92. Moreover, the Examiner cites no reference for teaching these elements.

Appellants respectfully submit that the "Official Notice" that the Examiner takes fails to make up for these deficiencies. For example, the "Official Notice" that the Examiner takes addresses using the Internet with Kamakura's system. The "Official Notice" that the Examiner takes does not address the missing elements recited in claim 92, namely "wherein delivering the

event to the user is *not based on conditions set by a publisher* of the information,” “automatically *delivering the microserver* to the user via the Internet,” and/or “*allowing other web page content to automatically subscribe* to events on behalf of the user.” Thus Kamakura in view of “Official Notice” fails to teach each and every element of the claimed invention.

Each Element of the Prima Facie Case of Obviousness Must Be Met

Appellants respectfully submit that the Examiner has failed to satisfy each criterion of the *prima facie* case of obviousness with respect to independent claims 27, 86, and 92. Appellants only need to show that one prong of the *prima facie* case of obviousness is not met for the burden to remain with the Examiner. Appellants respectfully submit that the Examiner has not demonstrated at the very least that the references teach or suggest each and every element of the claimed invention. Accordingly, Appellants respectfully request that the rejection be overturned.

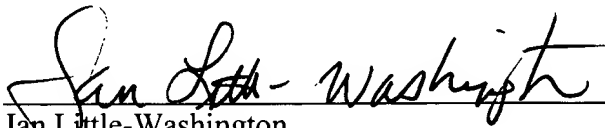
CONCLUSION

Appellants respectfully submit that the Examiner has failed to set forth a *prima facie* case of anticipation and/or obviousness with respect to the claimed invention because the Examiner has failed to show how the cited references teach each and every element of the claimed invention. Appellants therefore respectfully submit that the rejections of the claims under appeal were improper and request that the rejections be overturned.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN

Date: 2/19/2006


Jan Little-Washington
Reg. No. 41,181
(206) 292-8600

12400 Wilshire Boulevard
Seventh Floor
Los Angeles, CA 90025-1030

VIII. Claims Appendix

The pending claims as they stand on appeal are presented below.

1. A method, comprising:
 - monitoring and detecting publication of information in a network;
 - organizing the detected information into at least one event and routing the at least one event to a set of topics;
 - facilitating a user to persistently subscribe to at least one topic selected from among the set of topics; and
 - delivering the event to the user via the Internet immediately upon detection based on a subscription to a topic, wherein delivering the event to the user is not in reply to a request from the user.

Claims 2-5. (Canceled).

6. The method of claim 1, further comprising organizing information into non-events, alerts, messages, queries, data, data content, patterns, streams, or queues.

Claims 7-9. (Canceled).

10. The method of claim 1, further comprising facilitating a user to persistently subscribe to a web resource, based on a universal resource locator (URL).

11. The method of claim 1, further comprising facilitating a user to persistently subscribe to a web user, based on an email address, a name or a location, and to specify a level of interest in the web user.

12. The method of claim 1, further comprising facilitating a user to persistently subscribe to a user's presence, based on an email address, a name or a location, and to specify a level of interest in the web user.

Claims 13-15. (Canceled).

16. The method of claim 1, further comprising registering a pager, cellular telephone, email, instant messenger, purchase order system, microserver-equipped client computer, facsimile machine, web browser, or spreadsheet and routing information to the user on the registered pager, cellular telephone, email, instant messenger, purchase order system, microserver-equipped client computer, facsimile machine, web browser, or spreadsheet, based on the selected topic and level of interest in the selected topic.

Claims 17-24. (Canceled).

25. The method of claim 1, further comprising filtering the information, based on the selected topic and level of interest in the selected topic, and delivering the filtered information to the user on a client system having an embedded microserver.

26. The method of claim 1, further comprising filtering the information based on the selected topic and level of interest in the selected topic, delivering the filtered information to the user on a client system having an embedded microserver, and facilitating the user to reply to the filtered information using the embedded microserver.

27. A method comprising:
monitoring and detecting publication of information in a network;
organizing the detected information into at least one event and routing the event to a set of topics;
facilitating at least one client to persistently subscribe to at least one topic selected from among the set of topics; and
delivering the event via the Internet to the client immediately upon detection based on a subscription to a topic, wherein delivering the event to the client is initiated by a server, and wherein the client does not include a programmed request and/or a poll for the event.

Claims 28-31. (Canceled).

32. The method of claim 27, further comprising organizing information into non-events, alerts, messages, queries, data, data content, patterns, streams, or queues.

Claims 33-35. (Canceled).

36. The method of claim 27, further comprising facilitating a client to persistently subscribe to a web resource, based on a universal resource locator (URL), and to specify a level of interest in the web resource.

37. The method of claim 27, further comprising facilitating a client to persistently subscribe to a web user, based on an email address, a name or a location, and to specify a level of interest in the web user.

38. The method of claim 27, further comprising facilitating a client to persistently subscribe to a clients presence, based on an email address, a name or a location, and to specify a level of interest in a web user.

Claims 39-41. (Canceled).

42. The method of claim 27, further comprising registering a pager, cellular telephone, email, instant messenger, purchase order system, microserver-equipped client computer, facsimile machine, web browser, or spreadsheet and routing information to the client on the registered pager, cellular telephone, email, instant messenger, purchase order system, microserver-equipped client computer, facsimile machine, web browser, or spreadsheet, based on the selected topic and level of interest in the selected topic.

Claims 43-76. (Canceled).

77. The method of claim 27, further comprising delivering the at least one event from multiple subscriptions to the client using a single connection.

78. The method of claim 27, further comprising delivering a first event via the Internet once and a second event via the Internet once, the first event being different from the second event.

79. The method of claim 78, further comprising re-establishing a broken connection while delivering the at least one event to the client once.

80. The method of claim 27, further comprising delivering the at least one event to an electronic document using a microserver at the client.

81. The method of claim 27, further comprising delivering the at least one event to a web browser at the client.

82. The method of claim 27, further comprising establishing multiple routes between delivering events and the clients.

83. The method of claim 27, further comprising organizing events based on universal resource identifiers.

84. The method of claim 27, further comprising addressing subscriptions based on universal resource locators.

85. The method of claim 27, further comprising determining subscribers to a topic based on the topic.

86. A method, comprising:
 monitoring and detecting publication of information in a network;
 organizing the detected information into at least one event and routing the events to a set of topics;
 facilitating a user to persistently subscribe to at least one topic selected from among the set of topics; and

delivering the event to the user using a web server protocol, wherein the delivering the event to the user is not in response to a request and/or poll for the event.

87. The method of claim 86, further comprising delivering the event to a router from a router using the web server protocol.

88. The method of claim 86, further comprising delivering a first event via the Internet once and a second event via the Internet once, the first event being different from the second event.

89. The method of claim 88, further comprising re-establishing a broken connection while delivering the at least one event to the client once.

90. The method of claim 86, further comprising establishing multiple routes between delivering events and the clients.

91. The method of claim 86, further comprising determining subscribers to a topic based on the topic.

92. A method, comprising:

receiving a connection at a web page from a user, the web page having content including a microserver;

automatically delivering the microserver to the user via the Internet;

allowing other web page content to automatically subscribe to events on behalf of the user; and

delivering events and/or other web page content to the user.

IX. Evidence Appendix

Appellants make no reference to evidence.

X. Related Proceedings Appendix

To the best of Appellants' knowledge, there are no prior or pending appeals, interferences, or judicial proceedings that may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.